

Internal Revenue Service

Number: **201422004**

Release Date: 5/30/2014

Index Number: 368.03-00, 351.00-00,
355.01-00, 721.00-00

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

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CC:CORP:2

PLR-118692-13

Date:

December 20, 2013

Legend

Distributing 1 =

Distributing 2 =

HoldCo =

HoldCo LLC =

New HoldCo =

Controlled =

Sub 1 =

PLR-118692-13

Sub 2 =

Sub 3 =

Sub 4 =

Sub 5 =

Sub 6 =

P1 =

P2 =

P3 =

P4 =

P5 =

PLR-118692-13

P4 Affiliates =

LLC =

DE =

Business A1 =

Business A2 =

State X =

Date 1 =

a =

b =

c =

d =

e =

f =

PLR-118692-13

g =

h =

i =

j =

k =

l =

m =

n =

o =

p =

Dear :

This letter responds to your authorized representative's letter dated April 19, 2013, requesting rulings regarding certain federal income tax consequences of a proposed transaction. The information submitted in that request and in later correspondence is summarized below (collectively, the "PLR Submission").

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

In particular, this office has not reviewed any information pertaining to, and has made no determination regarding whether the Internal Distribution and the External Distribution (both defined below): (i) satisfy the business purpose requirement of § 1.355-2(b) of the Income Tax Regulations; (ii) are used principally as a device for the distribution of the earnings and profits of any distributing corporation or any controlled corporation or both (see § 355(a)(1)(B) of the Internal Revenue Code and Treas. Reg. § 1.355-2(d)); and (iii) are part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest in any distributing corporation or any controlled corporation (see § 355(e)(2)(A)(ii) and Treas. Reg. § 1.355-7).

Facts

Distributing 2 is the common parent of an affiliated group of corporations that files a consolidated U.S. federal income tax return (the “Distributing 2 Group”). Distributing 2 owns all of the issued and outstanding stock of Distributing 1, a member of the Distributing 2 Group, and Distributing 1 owns all of the issued and outstanding stock of HoldCo and Sub 1, each a member of the Distributing 2 Group.

HoldCo owns all of the issued and outstanding stock of Controlled, Sub 2, and Sub 3, and all of the outstanding interests in Sub 4. HoldCo acquired Controlled on Date 1. Controlled, Sub 2, and Sub 3 are each members of the Distributing 2 Group.

Sub 1 and HoldCo own a% and b% percent, respectively, of the issued and outstanding stock of Sub 5. Sub 1 and HoldCo also own a% and c%, respectively, of the outstanding interests in Sub 6. The remaining d% of the outstanding interests in Sub 6 is owned by Sub 4.

Distributing 2 has outstanding a single class of common stock that is owned by private investors. Specifically, P1 and P2 (an affiliate of P1), each a partnership for federal income tax purposes, own e% and f%, respectively, of the stock of Distributing 2. The remaining g% of the stock of Distributing 2 is owned by various entities and individuals (collectively, the “Distributing 2 Minority”), including key personnel of the Distributing 2 Group and private investors who also invest indirectly in the Distributing 2 Group through P1. (Collectively, P1, P2, and the Distributing 2 Minority are referred to as the “Distributing 2 Shareholders.”)

P1 is owned by various partners, including P3, a partnership for federal income tax purposes. P3 controls the management of P1. The rights to manage and make decisions for P3 are vested with its two managing members who have equal voting rights.

P4 and the P4 Affiliates (collectively, the “P4 Entities”), each a partnership for federal income tax purposes, are owned by various partners, including P5, also a partnership for federal income tax purposes. P5 controls the management of each of the P4 Entities. The rights to manage and make decisions for P5 (except with respect to certain extraordinary matters) are vested with its two managing members who have equal voting rights. These two members are the same persons who have control of the management of P3.

LLC, a partnership for federal income tax purposes, has outstanding a single series of membership units and each unit in that series is identical in all respects, including voting rights and rights to distributions. The P4 Entities own approximately h% of LLC’s outstanding membership units; specifically, P4 owns approximately i% and the P4 Affiliates own approximately j%. The remaining k% of LLC’s membership units are

owned by various entities and individuals (collectively, the “LLC Minority”). LLC owns all of the membership interests in DE, a disregarded entity for federal income tax purposes.

The management of LLC is controlled by 1 managers. By virtue of the LLC Operating Agreement, P4 has the right to elect at least m% of LLC’s managers.

Generally, P1 and the P4 Entities are under common ownership. More specifically, P3 (a partner in P1) and P5 (a partner in each of the P4 Entities) are owned by the same persons, with such persons owning substantially similar respective ownership percentages in each of P3 and P5. Collectively, these persons also control the management of each of P3 and P5. In addition, other partners in P1 and the P4 Entities have a high degree of overlapping ownership.

The Distributing 2 Group is engaged in Business A1 and Business A2. Specifically, Distributing 1 is directly engaged in Business A1, and each of Controlled and Sub 2 is directly engaged in Business A2. LLC, through its interest in DE, is also engaged in Business A2.

Financial information has been received indicating that the Distributing 2 Group’s Business A1 and Business A2 each has had gross receipts and operating expenses representative of the active conduct of a trade or business for each of the past five years.

The Distributing 2 Group has determined that the separation of Business A1 from Business A2 will serve the following corporate business purposes: (i) to allow management of Business A2 to focus solely on the management and operation of the combined Business A2 to be conducted by Controlled, Sub 2, and LLC; (ii) to allow Business A2 to raise capital to facilitate future capital expenditures and acquisitions; (iii) to enhance Business A2’s ability to attract and retain key personnel; and (iv) to eliminate competition for resources between Business A1 and Business A2.

Proposed Transaction

For what are represented to be valid business reasons the following transaction has been proposed (the “Proposed Transaction”):

- (i) HoldCo will convert under State X law to a single-member limited liability company (hereinafter, HoldCo LLC) that will be treated as a disregarded entity for federal income tax purposes (the “Conversion”).
- (ii) HoldCo LLC will form a new State X corporation (“New Holdco”) to which it will transfer all of its interests in Sub 4 and Sub 5 solely in exchange for New Holdco voting common stock (the “New HoldCo Exchange”).

- (iii) HoldCo LLC will transfer all of the stock of Sub 2 to Controlled (the “Contribution”).
- (iv) HoldCo LLC will distribute all of the stock of Controlled to Distributing 1 (a transaction disregarded for federal income tax purposes).
- (v) Distributing 1 will distribute all of the stock of Controlled to Distributing 2 (the “Internal Distribution”).
- (vi) Distributing 2 will distribute all of the stock of Controlled received in the Internal Distribution pro rata to the Distributing 2 Shareholders (the “External Distribution”).
- (vii) Distributing 2 Shareholders who choose to participate (the “Participating Distributing 2 Shareholders”) will transfer all of their stock of Controlled to LLC in exchange for LLC membership units from the sole series of outstanding LLC units (the “Partnership Exchange”). To minimize potential conflicts between P1, the majority shareholder in Controlled following the External Distribution, and minority shareholders in Controlled who choose not to participate in the Partnership Exchange, P4 may purchase up to n% of the stock of Controlled from such nonparticipating shareholders for cash (the “Controlled Stock Purchase”). If the Controlled Stock Purchase occurs, P4 will transfer such Controlled stock to LLC in exchange for LLC membership units in the Partnership Exchange and the Participating Distributing 2 Shareholders will have the opportunity to purchase such membership units from P4 on a pro rata basis.

After completion of the Partnership Exchange, the LLC Minority and the P4 Entities will own approximately 0% (more than 50 percent) of the membership units in LLC, and the LLC Minority and the P4 Entities will own, indirectly, more than 50 percent of the stock of Controlled. However, because of the substantial overlap of the individuals, partners of partnerships, and owners of other entities that historically owned, indirectly, stock of Controlled and the individuals, partners of partnerships, and owners of other entities that historically owned, indirectly, interests in LLC, the Distributing 2 Group has determined that persons that were direct or indirect owners of stock of Controlled prior to the Partnership Exchange will continue to own, directly or indirectly, after the Partnership Exchange, more than 50 percent of the stock of Controlled for purposes of § 355(e).

In making this determination, the following assumptions (collectively, the “Counting Assumptions”) were relied upon: (i) the methodology of the example in the 1998 legislative history to § 355(e)(3)(A)(iv) (the “net decrease” methodology) is applicable for purposes of determining whether there has been an acquisition of stock possessing at least 50 percent of the total combined voting power of all classes of Controlled stock entitled to vote or at least 50 percent of the total value of shares of all classes of

Controlled stock under § 355(e); (ii) in applying § 355(e)(3)(A)(iv) and the net decrease methodology, the taxpayer may look through LLC, partnerships and S corporations within the Distributing 2 Minority, P1, P2, P3, the P4 Entities, and P5 to the indirect owners of the Controlled stock at the level of the partners in the partnerships and the level of the shareholders of the corporations, and may take into account the overlap in the indirect ownership of Controlled stock at that level, based upon their actual knowledge (the “look through methodology”); and (iii) in applying § 355(e)(3)(A)(iv) and assumptions (i) and (ii), an entity within the Distributing 2 Minority or a partner in LLC, a partnership within the Distributing 2 Minority, P1, P2, P3, the P4 Entities, or P5 that is described in any of the following categories will be treated as the ultimate indirect owner (without further look-through) of its indirect percentage share of the Controlled stock – (a) any United States pension trust described in § 401(a) which is exempt from tax under § 501(a), and (b) any United States charitable organization described in § 501(c)(3) (including an endowment or private foundation).

For the two year period following the Proposed Transaction, it is expected that Controlled and Sub 2 will purchase products from Distributing 1 for fair market value based on terms and conditions available to third parties. In addition, the Distributing 2 Group will enter into an agreement with Controlled and Sub 2 for transitional services (for example, information technology, human resources, and payroll processing) for a period not expected to exceed two years following the Proposed Transaction. The agreement will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm’s length.

Representations

The HoldCo Conversion

The following representations are made with respect to the HoldCo Conversion:

- (1a) During the five-year period ending on the date of the HoldCo Conversion: (i) no person related (as defined in Treas. Reg. § 1.368-1(e)(4)) to Distributing 1 will have acquired HoldCo stock with consideration other than Distributing 1 stock; (ii) no person related to Distributing 1 will have acquired or redeemed HoldCo stock with consideration other than Distributing 1 stock or HoldCo stock; and (iii) no distribution will have been made with respect to the stock of HoldCo, other than ordinary, normal, regular dividend distributions made pursuant to the historic dividend paying practice of HoldCo either directly or through any transaction, agreement, or arrangement with any other person.
- (1b) The fair market value of the Distributing 1 stock that will be deemed to be received by Distributing 1 in the HoldCo Conversion will be approximately equal to the fair market value of the HoldCo stock that will be deemed to be surrendered in the HoldCo Conversion.

- (1c) In the HoldCo Conversion, no consideration other than voting stock of Distributing 1 will be deemed to be issued.
- (1d) HoldCo will be deemed to distribute the Distributing 1 voting stock deemed received in the HoldCo Conversion, and its other properties, in pursuance of the plan of reorganization.
- (1e) Distributing 1 will be deemed to acquire at least 90 percent of the fair market value of the net assets and at least 70 percent of the fair market value of the gross assets held by HoldCo immediately prior to the HoldCo Conversion. For purposes of this representation: (i) amounts used by HoldCo to pay its expenses, if any, in connection with the HoldCo Conversion; (ii) amounts paid by HoldCo to shareholders who receive cash or other property, if any, in the HoldCo Conversion; and (iii) all redemptions and distributions (except for regular, normal dividends) made by HoldCo immediately preceding the HoldCo Conversion will be included as assets of HoldCo held immediately prior to the HoldCo Conversion.
- (1f) Distributing 1 has no plan or intention to sell or otherwise dispose of any of the assets of HoldCo that will be deemed to be acquired in the HoldCo Conversion, except for dispositions made in the ordinary course of business, or transfers described in § 368(a)(2)(C) or Treas. Reg. § 1.368-2(k).
- (1g) The liabilities of HoldCo, if any, deemed to be assumed (within the meaning of § 357(d)) by Distributing 1 and the liabilities to which the HoldCo assets deemed to be transferred are subject were incurred by HoldCo in the ordinary course of its business and are associated with the assets that will be deemed to be transferred to Distributing 1 in the HoldCo Conversion.
- (1h) Following the HoldCo Conversion, Distributing 1 will continue, either directly or through one or more members of Distributing 1's qualified group (as defined in Treas. Reg. § 1.368-1(d)(4)(ii)), the historic business of HoldCo or will use a significant portion of HoldCo's historic business assets in a business.
- (1i) Each of Distributing 1 and HoldCo will pay its respective expenses, if any, incurred in connection with the HoldCo Conversion.
- (1j) At the time of the HoldCo Conversion, there will be no indebtedness existing between Distributing 1 and HoldCo that was issued or acquired at a discount or that will be settled at a discount.
- (1k) Neither Distributing 1 nor HoldCo will be an investment company within the meaning of § 368(a)(2)(F)(iii) and (iv).

- (1l) The total fair market value of the assets of HoldCo that will be deemed to be transferred to Distributing 1 in the HoldCo Conversion will exceed the sum of: (i) the amount of any liabilities that will be deemed to be assumed (within the meaning of § 357(d)) by Distributing 1 in the HoldCo Conversion; (ii) the amount of any liabilities owed to Distributing 1 by HoldCo that are discharged or extinguished in connection with the HoldCo Conversion; and (iii) the amount of cash and the fair market value of any other property (other than stock and securities permitted to be received under § 361(a) without recognition of gain) received by HoldCo in the HoldCo Conversion. The fair market value of the assets of Distributing 1 will exceed the amount of its liabilities immediately after the HoldCo Conversion.
- (1m) HoldCo is not under the jurisdiction of a court in a Title 11 or similar case within the meaning of § 368(a)(3)(A).
- (1n) Items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations as a result of the HoldCo Conversion (See Treas. Reg. §§ 1.1502-13 and 1.1502-14 as in effect before the publication of T.D. 8597, 1995-32 I.R.B. 6, and as currently in effect; Treas. Reg. § 1.1502-13 as published by T.D. 8597).
- (1o) All material steps that comprise the Proposed Transaction, including the HoldCo Conversion (i) will be undertaken pursuant to a prearranged overall plan of reorganization, which will be adopted and approved by the Board of Directors of Distributing 2 and its appropriate affiliates, and (ii) will be reported consistently by the respective parties for federal income tax purposes.
- (1p) The Proposed Transaction, including the HoldCo Conversion, will be carried out for the following corporate business purposes: (i) to allow management of Business A2 to focus solely on the management and operation of the combined Business A2 to be conducted by Controlled, Sub 2, and LLC; (ii) to allow Business A2 to raise capital to facilitate future capital expenditures and acquisitions; (iii) to enhance Business A2's ability to attract and retain key personnel; and (iv) to eliminate competition for resources between Business A1 and Business A2.

The New HoldCo Exchange

The following representations are made with respect to the New HoldCo Exchange:

- (2a) No stock or securities will be issued for services rendered to or for the benefit of New HoldCo in connection with the New HoldCo Exchange, and no stock or securities will be issued for indebtedness of New HoldCo that is not evidenced by a security or for interest on indebtedness of New HoldCo which

- accrued on or after the beginning of the holding period of Distributing 1 for the debt.
- (2b) Distributing 1 (through its interest in HoldCo LLC) will not retain any rights in the property transferred to New HoldCo.
 - (2c) The New HoldCo Exchange will not be the result of the solicitation by a promoter, broker, or investment house.
 - (2d) The total adjusted basis of the assets to be transferred to New HoldCo by Distributing 1 will equal or exceed the sum of the liabilities, if any, assumed (as determined under § 357(d)) by New HoldCo plus any liabilities to which the transferred assets are subject.
 - (2e) The liabilities, if any, to be assumed (as determined under § 357(d)) by New HoldCo and the liabilities to which the transferred assets will be subject will have been incurred in the ordinary course of business and will be associated with the assets transferred.
 - (2f) There will be no indebtedness between Distributing 1 and New HoldCo or between HoldCo LLC and New HoldCo at the time of the New HoldCo Exchange and there will be no indebtedness created in favor of Distributing 1 or HoldCo LLC as a result of the New HoldCo Exchange.
 - (2g) The total fair market value of the assets transferred to New HoldCo by Distributing 1 in the New HoldCo Exchange will exceed the sum of: (i) the amount of any liabilities assumed (within the meaning of § 357(d)) by New HoldCo in connection with the New HoldCo Exchange; (ii) the amount of any liabilities owed to New HoldCo by Distributing 1 or HoldCo LLC that are discharged or extinguished in connection with the New HoldCo Exchange; and (iii) the amount of cash and the fair market value of any other property (other than stock of New HoldCo permitted to be received under § 351(a) without the recognition of gain) received by Distributing 1 or HoldCo LLC in connection with the New HoldCo Exchange. The fair market value of the assets of New HoldCo will exceed the amount of its liabilities immediately after the New HoldCo Exchange.
 - (2h) The New HoldCo Exchange will occur under a plan agreed upon before the transaction in which the rights of the parties are defined.
 - (2i) All exchanges in connection with the New HoldCo Exchange will occur on approximately the same date.

- (2j) There is no plan or intention on the part of New HoldCo to redeem or otherwise reacquire any stock to be issued in the New HoldCo Exchange.
- (2k) Distributing 1 will receive New HoldCo voting common stock approximately equal to the fair market value of the property transferred to New HoldCo.
- (2l) Following the Proposed Transaction, including the New HoldCo Exchange, New HoldCo will remain in existence and retain and use the property transferred to it in connection with the New HoldCo Exchange in a trade or business.
- (2m) Each of Distributing 1 and New HoldCo will pay its respective expenses, if any, incurred in connection with the New HoldCo Exchange.
- (2n) At the time of the New HoldCo Exchange, New HoldCo will not be an investment company within the meaning of § 351(e)(1) and Treas. Reg. § 1.351-1(c)(1)(ii), and the stock received in the New HoldCo Exchange will not be used to satisfy the indebtedness of Distributing 1.
- (2o) At the time of the New HoldCo Exchange, neither Distributing 1 nor HoldCo LLC will be under the jurisdiction of a court in a Title 11 or similar case (within the meaning of § 368(a)(3)(A)), and the New HoldCo stock received in the New HoldCo Exchange will not be used to satisfy the indebtedness of Distributing 1.
- (2p) At the time of the New HoldCo Exchange, New HoldCo will not be a personal service corporation within the meaning of § 269(A).
- (2q) None of the stock to be transferred by Distributing 1 to New HoldCo in the New HoldCo Exchange is “§ 306 stock” within the meaning of § 306(c).
- (2r) No debt relating to stock to be transferred (or to which such stock is subject) will be assumed by New HoldCo in connection with the New HoldCo Exchange.
- (2s) Taking into account any issuance of additional shares of New HoldCo stock, any issuance of New HoldCo stock for services, the exercise of any New HoldCo stock rights, warrants, or subscriptions; a public offering of New HoldCo stock; and the sale, exchange, transfer by gift, or other disposition of any of the stock of New HoldCo to be received in the New HoldCo Exchange, Distributing 1 will be in “control” of New HoldCo within the meaning of § 368(c).

- (2t) There is no plan or intention by Distributing 1 to sell or otherwise dispose of the stock of New HoldCo to be received in the New HoldCo Exchange.
- (2u) There is no plan or intention by New HoldCo to dispose of the property to be transferred to it in the New HoldCo Exchange other than in the ordinary course of business.
- (2v) The New HoldCo Exchange is not being undertaken with a view to prevent the consolidated return provisions from properly addressing loss duplication within the meaning of Treas. Reg. § 1.502-80(h).

The Contribution and Internal Distribution

The following representations are made with respect to the Contribution and Internal Distribution:

- (3a) The indebtedness, if any, owed by Controlled to Distributing 1 after the Internal Distribution will not constitute stock or securities.
- (3b) No part of the consideration that will be distributed by Distributing 1 in the Internal Distribution will be received by Distributing 2 as a creditor, employee, or in any capacity other than that of a shareholder of Distributing 1.
- (3c) The five years of financial information submitted on behalf of Business A1 conducted by Distributing 1 is representative of the present operations of Business A1, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.
- (3d) The five years of financial information submitted on behalf of Business A2 conducted by Controlled is representative of the present operations of Business A2, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.
- (3e) Neither Business A1 conducted by Distributing 1 nor control of an entity conducting that business was acquired during the five year period ending on the date of the Internal Distribution in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part.
- (3f) Neither Business A2 conducted by Controlled nor control of an entity conducting that business was acquired during the five year period ending on the date of the Internal Distribution in a transaction in which gain or loss was

- recognized (or treated as recognized) in whole or in part, except in connection with the expansion of Business A1.
- (3g) Following the Internal Distribution, Distributing 1 will continue the active conduct of Business A1, independently and with its separate employees.
- (3h) Following the Internal Distribution, Controlled will continue the active conduct of Business A2, independently and with its separate employees.
- (3i) The Proposed Transaction, including the Contribution and Internal Distribution, will be carried out for the following corporate business purposes: (i) to allow management of Business A2 to focus solely on the management and operation of the combined Business A2 to be conducted by Controlled, Sub 2, and LLC; (ii) to allow Business A2 to raise capital to facilitate future capital expenditures and acquisitions; (iii) to enhance Business A2's ability to attract and retain key personnel; and (iv) to eliminate competition for resources between Business A1 and Business A2.
- (3j) The Internal Distribution is not being used principally as a device for the distribution of the earnings and profits of Distributing 1 (or its subsidiaries) or Controlled (or its subsidiaries) or both.
- (3k) Except as otherwise described in the Proposed Transaction, with respect to Distributing 1 and Controlled, neither Distributing 2 nor any of its relevant affiliates have any current plan or intention to: (i) make a check-the-box election to change such entity's classification (for federal income tax purposes); (ii) cause such entity to liquidate, merge, or otherwise terminate its corporate existence; or (iii) cause the owner(s) of such entity to sell, transfer, convey, or otherwise dispose of the equity interest in such entity.
- (3l) The total adjusted bases of the assets transferred to Controlled by Distributing 1 will equal or exceed the sum of (i) the total liabilities assumed (within the meaning of § 357(d)) by Controlled, and (ii) the total amount of money and the fair market value of any other property (within the meaning of § 361(b)) received by Distributing 1 and transferred by it to its creditors and shareholders in connection with the Contribution and Internal Distribution.
- (3m) The total fair market value of the assets that Distributing 1 will transfer to Controlled in the Contribution will exceed the sum of: (a) the amount of liabilities (if any) assumed (within the meaning of § 357(d)) by Controlled in connection with the Contribution and Internal Distribution; (b) the amount of any liabilities owed to Controlled by Distributing 1 that are discharged or extinguished in connection with the Contribution and Internal Distribution; and (c) the amount of any cash and the fair market value of any other property

- (other than stock and securities permitted to be received under § 361(a) without the recognition of gain) received by Distributing 1 from Controlled in connection with the Contribution and Internal Distribution. The fair market value of the assets of Controlled will exceed the amount of its liabilities immediately after the Internal Distribution.
- (3n) Neither Distributing 1 nor Controlled will be an investment company within the meaning of § 368(a)(2)(F)(iii) and (iv).
- (3o) Distributing 1 is not under the jurisdiction of a court in a Title 11 or similar case within the meaning of § 368(a)(3)(A).
- (3p) Immediately before the Internal Distribution, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations (See Treas. Reg. §§ 1.1502-13 and 1.1502-14 as in effect before the publication of T.D. 8597, 1995-32 I.R.B. 6, and as currently in effect; Treas. Reg. § 1.1502-13 as published by T.D. 8597).
- (3q) At the time of the Internal Distribution, Distributing 1 will not have an excess loss account (“ELA”) in the stock of Controlled or in the stock of any subsidiary of Controlled.
- (3r) No indebtedness will exist between Distributing 1 (and its subsidiaries) and Controlled (and its subsidiaries) at the time of, or subsequent to, the Internal Distribution, except as may arise in the ordinary course of business.
- (3s) Payments made in connection with all continuing transactions between Distributing 1 (and its subsidiaries) and Controlled (and its subsidiaries) following the Internal Distribution will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm’s length.
- (3t) For purposes of § 355(d), immediately after the Internal Distribution, no person (determined after applying the aggregation rules of § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing 1 stock entitled to vote or 50 percent or more of the total value of shares of all classes of Distributing 1 stock that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five year period (determined after applying § 355(d)(6)) ending on the date of the Internal Distribution.
- (3u) For purposes of § 355(d), immediately after the Internal Distribution, no person (determined after applying the aggregation rules of § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power

- of all classes of Controlled stock entitled to vote or 50 percent or more of the total value of shares of all classes of Controlled stock that was either (i) acquired by purchase (as defined in § 355(d)(5) and (8)) during the five year period (determined after applying § 355(d)(6)) ending on the date of the Internal Distribution, or (ii) attributable to distributions on Distributing 1's stock or securities that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five year period (determined after applying § 355(d)(6)) ending on the date of the Internal Distribution.
- (3v) No direct or indirect acquisition of stock of Distributing 1 (including any predecessor or successor of such corporations) has or will occur pursuant to a plan or series of related transactions (within the meaning of Treas. Reg. § 1.355-7) that includes the Internal Distribution.
- (3w) Except as described in representation (3x), no direct or indirect acquisition of stock of Controlled (including any predecessor or successor of such corporation) has or will occur pursuant to a plan or series of related transactions (within the meaning of Treas. Reg. § 1.355-7) that includes the Internal Distribution. In particular, no direct or indirect acquisition of any of the following interests is or was part of a plan or series of related transactions (within the meaning of Treas. Reg. § 1.355-7) that includes the Internal Distribution: (i) an interest in P1, P2, or P3 by a new or existing partner of such partnership, or an interest in any person or persons at any level above these partnerships; or (ii) an interest in a partnership or S corporation within the Distributing 2 Minority or an interest in any person or persons at any level above these entities.
- (3x) Each of the following acquisitions of stock of Controlled (including any predecessor or successor of such corporation) is or may be part of a plan or series of related transactions (within the meaning of Treas. Reg. § 1.355-7) that includes the Internal Distribution: (i) the Controlled Stock Purchase; and (ii) the indirect acquisitions of stock of Controlled by (a) the LLC Minority, (b) P4 and the partners of P4, (c) the P4 Affiliates and the partners of the P4 Affiliates, and (d) P5 and the partners of P5, resulting from the Partnership Exchange. Based upon use of the Counting Assumptions and upon the valuation of interests in Controlled at fair market value, taking all of these acquisitions into account, stock representing a 50 percent or greater interest (within the meaning of § 355(d)(4)) in Controlled (including any predecessor or successor of such corporation) will not be acquired by any person or persons within the meaning of § 355(e)(2)(A).
- (3y) The minimum ownership percentage in Controlled (as computed in accordance with use of the Counting Assumptions and the valuation of direct and indirect interests in Controlled at fair market value) held indirectly by each

- Overlap Partner and held directly or indirectly, immediately before the Partnership Exchange, by each person in the Distributing 2 Minority is expected to be at least p% on an aggregate basis as a result of the Partnership Exchange. (A partner that holds an interest both in P1, P2, and/or P3, and in P4, a P4 Affiliate, and/or P5 is referred to as an “Overlap Partner.”) The “minimum ownership percentage” of any Overlap Partner or person in the Distributing 2 Minority is the lesser of (i) the percentage of Controlled stock owned, directly or indirectly, by the person immediately before the Partnership Exchange (excluding all interests attributable to Controlled stock acquired in the Controlled Stock Purchase) or (ii) the percentage of Controlled stock owned, directly or indirectly, by such person immediately after the Partnership Exchange (excluding all interests attributable to Controlled stock acquired in the Controlled Stock Purchase).
- (3z) Immediately after the Internal Distribution (taking into account § 355(g)(4)), neither Distributing 1 nor Controlled will be a disqualified investment corporation (within the meaning of § 355(g)(2)).
- (3aa) Distributing 1 neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of the Internal Distribution.
- (3bb) The liabilities, if any, to be assumed (within the meaning of § 357(d)) by Controlled and the liabilities to which the transferred assets will be subject will have been incurred in the ordinary course of business and will be associated with the assets being transferred.
- (3cc) No property will be transferred between Distributing 1 and Controlled in the Contribution for which an investment credit under § 46 has been or will be claimed.
- (3dd) All material steps that comprise the Proposed Transaction, including the Contribution and Internal Distribution, (i) will be undertaken pursuant to a prearranged overall plan of reorganization, which will be adopted and approved by the Board of Directors of Distributing 2 and its appropriate affiliates, and (ii) will be reported consistently by the respective parties for federal income tax purposes.
- (3ee) Each of Distributing 1 and Controlled will pay its respective expenses, if any, incurred in connection with the Internal Distribution.

The External Distribution

The following representations are made with respect to the External Distribution:

- (4a) The indebtedness, if any, owed by Controlled to Distributing 2 after the External Distribution, will not constitute stock or securities.
- (4b) No part of the consideration that will be distributed by Distributing 2 in the External Distribution will be received by the Distributing 2 Shareholders as a creditor, employee, or in any capacity other than that of a shareholder of Distributing 2.
- (4c) In applying § 355(b)(2)(A) regarding the active conduct of a trade or business, Distributing 2 will treat all members of its separate affiliated group (the “Distributing 2 SAG”) as defined in § 355(b)(3)(B), as one corporation.
- (4d) The five years of financial information submitted on behalf of Business A1 conducted by the Distributing 2 SAG is representative of the present operations of Business A1, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.
- (4e) The five years of financial information submitted on behalf of Business A2 conducted by Controlled is representative of the present operations of Business A2, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.
- (4f) Neither Business A1 conducted by the Distributing 2 SAG nor control of an entity conducting that business was acquired during the five year period ending on the date of the External Distribution in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part.
- (4g) Neither Business A2 conducted by Controlled nor control of an entity conducting that business was acquired during the five year period ending on the date of the External Distribution in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part, except in connection with the expansion of Business A1.
- (4h) Following the External Distribution, the Distributing 2 SAG will continue the active conduct of Business A1, independently and with its separate employees.
- (4i) Following the External Distribution, Controlled will continue the active conduct of Business A2, independently and with its separate employees.
- (4j) The Proposed Transaction, including the External Distribution, will be carried out for the following corporate business purposes: (i) to allow management of

- Business A2 to focus solely on the management and operation of the combined Business A2 to be conducted by Controlled, Sub 2, and LLC; (ii) to allow Business A2 to raise capital to facilitate future capital expenditures and acquisitions; (iii) to enhance Business A2's ability to attract and retain key personnel; and (iv) to eliminate competition for resources between Business A1 and Business A2.
- (4k) The External Distribution is not being used principally as a device for the distribution of the earnings and profits of Distributing 2 (or its subsidiaries) or Controlled (or its subsidiaries) or both.
- (4l) Except as otherwise described in the Proposed Transaction, neither Distributing 2 nor Controlled have any current plan or intention to: (i) make a check-the-box election to change such entity's classification (for federal income tax purposes); (ii) liquidate, merge, or otherwise terminate its corporate existence; or (iii) cause its owner(s) to sell, transfer, convey, or otherwise dispose of the equity interest in such entity.
- (4m) Immediately before the External Distribution, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations (See Treas. Reg. §§ 1.1502-13 and 1.1502-14 as in effect before the publication of T.D. 8597, 1995-32 I.R.B. 6, and as currently in effect; Treas. Reg. § 1.1502-13 as published by T.D. 8597).
- (4n) At the time of the External Distribution, Distributing 2 will not have an excess loss account ("ELA") in the stock of Controlled or in the stock of any subsidiary of Controlled.
- (4o) No indebtedness will exist between Distributing 2 (and its subsidiaries) and Controlled (and its subsidiaries) at the time of, or subsequent to, the External Distribution, except as may arise in the ordinary course of business.
- (4p) Payments made in connection with all continuing transactions between Distributing 2 (and its subsidiaries) and Controlled (and its subsidiaries) following the External Distribution will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.
- (4q) For purposes of § 355(d), immediately after the External Distribution, no person (determined after applying the aggregation rules of § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing 2 stock entitled to vote or 50 percent or more of the total value of shares of all classes of Distributing 2 stock that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five year

period (determined after applying § 355(d)(6)) ending on the date of the External Distribution.

- (4r) For purposes of § 355(d), immediately after the External Distribution, no person (determined after applying the aggregation rules of § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled stock entitled to vote or 50 percent or more of the total value of shares of all classes of Controlled stock that was either (i) acquired by purchase (as defined in § 355(d)(5) and (8)) during the five year period (determined after applying § 355(d)(6)) ending on the date of the External Distribution, or (ii) attributable to distributions on Distributing 2's stock or securities that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five year period (determined after applying § 355(d)(6)) ending on the date of the External Distribution.
- (4s) No direct or indirect acquisition of stock of Distributing 2 (including any predecessor or successor of such corporations) has or will occur pursuant to a plan or series of related transactions (within the meaning of Treas. Reg. § 1.355-7) that includes the External Distribution.
- (4t) Except as described in representation (4u), no direct or indirect acquisition of stock of Controlled (including any predecessor or successor of such corporation) has or will occur pursuant to a plan or series of related transactions (within the meaning of Treas. Reg. § 1.355-7) that includes the External Distribution. In particular, no direct or indirect acquisition of any of the following interests is or was part of a plan or series of related transactions (within the meaning of Treas. Reg. § 1.355-7) that includes the External Distribution: (i) an interest in P1, P2, or P3 by a new or existing partner of such partnership, or an interest in any person or persons at any level above these partnerships; or (ii) an interest in a partnership or S corporation within the Distributing 2 Minority, or an interest in any person or persons at any level above these entities.
- (4u) Each of the following acquisitions of stock of Controlled (including any predecessor or successor of such corporation) is or may be part of a plan or series of related transactions (within the meaning of Treas. Reg. § 1.355-7) that includes the External Distribution: (i) the Controlled Stock Purchase; and (ii) the indirect acquisitions of stock of Controlled by (a) the LLC Minority, (b) P4 and the partners of P4, (c) the P4 Affiliates and the partners of the P4 Affiliates, and (d) P5 and the partners of P5, resulting from the Partnership Exchange. Based upon use of the Counting Assumptions, and upon the valuation of interests in Controlled at fair market value, taking all of these acquisitions into account, stock representing a 50 percent or greater interest (within the meaning of § 355(d)(4)) in Controlled (including any predecessor

or successor of such corporation) will not be acquired by any person or persons within the meaning of § 355(e)(2)(A).

- (4v) The minimum ownership percentage in Controlled (as computed in accordance with use of the Counting Assumptions and the valuation of direct and indirect interests in Controlled at fair market value) held indirectly by each Overlap Partner and held directly or indirectly, immediately before the Partnership Exchange, by each person in the Distributing 2 Minority is expected to be at least p% on an aggregate basis as a result of the Partnership Exchange. (A partner that holds an interest both in P1, P2, and/or P3, and in P4, a P4 Affiliate, and/or P5 is referred to as an “Overlap Partner.”) The “minimum ownership percentage” of any Overlap Partner or person in the Distributing 2 Minority is the lesser of (i) the percentage of Controlled stock owned, directly or indirectly, by the person immediately before the Partnership Exchange (excluding all interests attributable to Controlled stock acquired in the Controlled Stock Purchase) or (ii) the percentage of Controlled stock owned, directly or indirectly, by such person immediately after the Partnership Exchange (excluding all interests attributable to Controlled stock acquired in the Controlled Stock Purchase).
- (4w) Immediately after the External Distribution (taking into account § 355(g)(4)), neither Distributing 2 nor Controlled will be a disqualified investment corporation (within the meaning of § 355(g)(2)).
- (4x) All material steps that comprise the Proposed Transaction, including the External Distribution, (i) will be undertaken pursuant to a prearranged overall plan, which will be adopted and approved by the Board of Directors of Distributing 2 and its appropriate affiliates, and (ii) will be reported consistently by the respective parties for federal income tax purposes.

The Partnership Exchange

The following representations are made with respect to the Partnership Exchange:

- (5a) LLC is not an investment company within the meaning of § 351(e).
- (5b) Neither the Participating Distributing 2 Shareholders nor P4 will receive a distribution of property (not including money) contributed by any other partner of LLC within seven years from the date of the Partnership Exchange.
- (5c) LLC will not distribute any property (not including money) contributed by a Participating Distributing 2 Shareholder or P4 in the Partnership Exchange to any partner other than the partner contributing such property within seven years from the date of the Partnership Exchange.

- (5d) LLC will not assume any liabilities of the Participating Distributing 2 Shareholders or P4 in connection with the Partnership Exchange, and none of the Controlled stock transferred to LLC in the Partnership Exchange will be subject to any liabilities of the Participating Distributing 2 Shareholders or P4.
- (5e) Neither the Participating Distributing 2 Shareholders nor P4 will provide services to, or for the benefit of, LLC as consideration for the membership units in LLC received in the Partnership Exchange.
- (5f) LLC will not make any cash or property distributions to its partners other than operating cash flow distributions and tax distributions within two years from the date of the Partnership Exchange.

Rulings

The Conversion

Based solely on the information and representations submitted, we rule as follows on the Conversion:

- (1) For federal income tax purposes, the Conversion will be treated as a transfer by HoldCo of substantially all of its assets to Distributing 1 solely in exchange for Distributing 1 voting stock and the assumption of the liabilities of HoldCo, followed by the distribution by HoldCo of the Distributing 1 voting stock to Distributing 1 in complete liquidation of HoldCo. The Conversion will qualify as a reorganization under § 368(a)(1)(C). HoldCo and Distributing 1 each will be a “party to a reorganization” within the meaning of § 368(b).
- (2) HoldCo will recognize no gain or loss on the deemed transfer of its assets to Distributing 1 solely in exchange for the deemed issuance of Distributing 1 voting stock and the deemed assumption by Distributing 1 of the liabilities of HoldCo (sections 361(a) and 357(a)).
- (3) Distributing 1 will recognize no gain or loss on the deemed receipt of the assets of HoldCo in exchange for the deemed issuance of Distributing 1 voting stock (§ 1032(a)).
- (4) Distributing 1’s basis in each asset deemed received from HoldCo will be the same as the basis of such asset in the hands of HoldCo immediately before the Conversion (§ 362(b)).

- (5) Distributing 1's holding period in each asset deemed received from HoldCo will include the period during which such asset was held by HoldCo (§ 1223(2)).
- (6) HoldCo will recognize no gain or loss on the deemed distribution of Distributing 1 voting stock (§ 361(c)(1)).
- (7) Distributing 1 will recognize no gain or loss on the deemed receipt of Distributing 1 voting stock in exchange for its HoldCo stock (§ 354(a)).
- (8) Distributing 1 will succeed to and take into account, as of the close of the date of the Conversion, the items of HoldCo described in § 381(c) subject to the conditions and limitations specified in sections 381, 382, 383 and 384, and the regulations thereunder (§ 381(a)).
- (9) Except to the extent Distributing 1's earnings and profits already reflect HoldCo's earnings and profits, Distributing 1 will succeed to and take into account, the earnings and profits or deficit in earnings and profits, of HoldCo as of the close of the date of the Conversion (§ 381(c)(2)(A) and Treas. Reg. §§ 1.381(c)(2)-1 and 1.1502-33). Any deficit in the earnings and profits of Distributing 1 and HoldCo will be used only to offset earnings and profits accumulated after the date of the Conversion (§ 381(c)(2)(B)).

The New HoldCo Exchange

Based solely on the information and representations submitted, we rule as follows on the New HoldCo Exchange:

- (10) Distributing 1 will recognize no gain or loss on the transfer of its assets to New HoldCo solely in exchange for New HoldCo stock (§ 351(a)).
- (11) Distributing 1's basis in the New HoldCo stock received will be the same as the basis of the assets transferred by Distributing 1 to New HoldCo (§ 358(a)(1)).
- (12) Distributing 1's holding period in the New HoldCo stock will include the holding period of the Distributing 1 assets transferred in exchange therefor, provided that the assets were held as capital assets on the date of the New HoldCo Exchange (§ 1223(1)).
- (13) New HoldCo will recognize no gain or loss on the receipt of assets of Distributing 1 in exchange for New HoldCo stock (§ 1032(a)).

- (14) New HoldCo's basis in each asset received from Distributing 1 will be the same as the basis of such asset in the hands of Distributing 1 immediately before the New HoldCo Exchange (§ 362(a)(1)).
- (15) New HoldCo's holding period in each asset received from Distributing 1 will include the period during which such asset was held by Distributing 1 (§ 1223(2)).

The Contribution and Internal Distribution

Based solely on the information and representations submitted, we rule as follows on the Contribution and Internal Distribution:

- (16) The Contribution together with the Internal Distribution will qualify as a reorganization within the meaning of § 368(a)(1)(D). Distributing 1 and Controlled each will be "a party to a reorganization" within the meaning of § 368(b).
- (17) Distributing 1 will recognize no gain or loss on the transfer of assets to Controlled in the Contribution (§ 361(a)).
- (18) Controlled will recognize no gain or loss on the receipt of assets from Distributing 1 in the Contribution (§ 1032(a)).
- (19) Controlled's basis in each asset received from Distributing 1 will be the same as the basis of such asset in the hands of Distributing 1 immediately before the Contribution (§ 362(b)).
- (20) Controlled's holding period in each asset received from Distributing 1 will include the period during which such asset was held by Distributing 1 (§ 1223(2)).
- (21) Distributing 1 will recognize no gain or loss on the distribution of Controlled stock in the Internal Distribution (§ 361(c)(1)).
- (22) Distributing 2 will recognize no gain or loss (and no amount will be includible in its income) on the receipt of Controlled stock in the Internal Distribution (§ 355(a)(1)).
- (23) The basis of the stock of Distributing 1 and Controlled in the hands of Distributing 2 immediately after the Internal Distribution will be the same as the basis of the Distributing 1 stock held by Distributing 2 immediately before the Internal Distribution, allocated in proportion to the fair market value of

Distributing 1 and Controlled in accordance with § 358(a)(1) and Treas. Reg. § 1.358-2(a)(2) (§ 358(b)(2) and (c)).

- (24) Distributing 2's holding period in the Controlled stock received in the Internal Distribution will include the holding period of the Distributing 1 stock with respect to which the Internal Distribution is made, provided that such Distributing 1 stock is held as a capital asset on the date of the Internal Distribution (§ 1223(1)).
- (25) Earnings and profits, if any, will be allocated between Distributing 1 and Controlled in accordance with § 312(h) and Treas. Reg. §§ 1.312-10.

The External Distribution

Based solely on the information and representations submitted, we rule as follows on the External Distribution:

- (26) Distributing 2 will recognize no gain or loss on the distribution of Controlled stock in the External Distribution (§ 355(c)(1)).
- (27) The Distributing 2 Shareholders will recognize no gain or loss (and no amount will be includible in their income) on the receipt of Controlled stock in the External Distribution (§ 355(a)(1)).
- (28) The basis of the stock of Distributing 2 and Controlled in the hands of the Distributing 2 Shareholders immediately after the External Distribution will be the same as the basis of the Distributing 2 stock held by the Distributing 2 Shareholders immediately before the External Distribution, allocated in proportion to the fair market value of Distributing 2 and Controlled in accordance with § 358(a)(1) and Treas. Reg. § 1.358-2(a)(2)(i) (§ 358(b)(2) and (c)).
- (29) The Distributing 2 Shareholder's holding period in the Controlled stock received in the External Distribution will include the holding period of the Distributing 2 stock with respect to which the External Distribution is made, provided that such Distributing 2 stock is held as a capital asset on the date of the External Distribution (§ 1223(1)).
- (30) Earnings and profits, if any, will be allocated between Distributing 2 and Controlled in accordance with § 312(h) and Treas. Reg. §§ 1.312-10 and 1.1502-33(e)(3).

The Partnership Exchange

Based solely on the information and representations submitted, we rule as follows on the Partnership Exchange:

- (31) The transfer of Controlled stock by the Participating Distributing 2 Shareholders and P4 to LLC in exchange for interests in LLC constitutes a nonrecognition exchange pursuant to § 721.
- (32) The basis of the interests in LLC received by a Participating Distributing 2 Shareholder and by P4 in exchange for Controlled stock will be the same as their basis, respectively, in the Controlled stock at the time of the transfer (§ 722).
- (33) The holding period of a Participating Distributing 2 Shareholder's interest in LLC or P4's interest in LLC will include the respective period that they held the Controlled stock contributed to LLC, provided that such property was held as a capital asset within the meaning of § 1221 (§ 1223(1)).
- (34) LLC's basis in the Controlled stock contributed by the Participating Distributing 2 Shareholders and by P4 will be the same as the basis of the Controlled stock in the hands of the Participating Distributing 2 Shareholders and P4 at the time of the transfer (§ 723).
- (35) LLC's holding period in the Controlled stock contributed by the Participating Distributing 2 Shareholders and P4 will include the period that the Participating Distributing 2 Shareholders and P4 owned such stock (§ 1223(2)).

Caveats

No opinion is expressed about the tax treatment of the Proposed Transaction under other provisions of the Code or regulations or the tax treatment of any conditions existing at the time of, or effects resulting from, the Proposed Transaction that are not specifically covered by the above rulings. In particular, this office has not reviewed any information pertaining to and has made no determination regarding:

- (i) Whether the Internal Distribution and the External Distribution satisfy the business purpose requirement of Treas. Reg. § 1.355-2(b);
- (ii) Whether the Internal Distribution and the External Distribution are used principally as a device for the distribution of earnings and profits of Distributing 2, Distributing 1, Controlled, or any combination thereof (see § 355(a)(1)(B) and Treas. Reg. § 1.355-2(d)); and

- (iii) Whether the Internal Distribution and External Distribution and an acquisition or acquisitions are part of a plan (or series of related transactions) under § 355(e)(2)(A)(ii), provided that for purposes of Rulings (21) and (26), we have assumed that any direct or indirect acquisitions of Controlled stock resulting from (a) the Controlled Stock Purchase and (b) the Partnership Exchange are, in each case, acquisitions of stock that are part of a plan or series of related transactions (within the meaning of Treas. Reg. § 1.355-7) that includes the Internal Distribution and the External Distribution.

In addition, no opinion is expressed regarding the value of any partner's interest for § 355(e) purposes, and the percentage interest that any partner had or will have, directly or indirectly, in any of the Partnerships or in Controlled.

Procedural Statements

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

In accordance with the powers of attorney on file in this office, a copy of this ruling letter will be sent to the representative named therein.

Sincerely,

Frances L. Kelly
Senior Counsel, Branch 2
Office of Associate Chief Counsel
(Corporate)

cc: